



## SE-950 Master Agreement for Inspection Services

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**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ (the "Effective Date") by and between the South Carolina Office of State Engineer, hereinafter called the "OSE", an instrumentality of the State of South Carolina, acting on behalf of any participating Public Procurement Unit as defined by S.C. Code Ann. § 11-35-4610(5), hereinafter called "Owner", and,

a \_\_\_\_\_ duly licensed in the State of South Carolina, hereinafter called the "Consultant."

and whose address is

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Consultant and Owner may also be referred to in this Agreement collectively as the "Parties."

### RECITALS

The Parties stipulate and recite that:

OSE is the central office for South Carolina state government responsible for managing the acquisition of construction. OSE intends to establish a contract with a consultant in order to facilitate the acquisition by certain state and local governmental units of professional building inspection and testing services.. Consultant seeks to facilitate such an arrangement by establishing the terms and conditions of its potential contracts with the Owners.

### AGREEMENT

**For the reasons recited above, and in consideration of the mutual covenants contained herein, the Parties agree as follows:**

### **DEFINITIONS**

Owner means a Public Procurement Unit (as defined by S.C. Code Ann. § 11-35-4610(5), as amended) which has submitted a *Request for Inspection Services* to Consultant. By submitting a *Request for Inspection Services* to Consultant, a Public Procurement Unit manifests its intent to be and is bound by this Agreement.

OSE means the Office of the State Engineer established by South Carolina Code Section 11-35-830, as amended, or its successor in interest. Pursuant to Section 11-35-4810, OSE is authorized to conduct and administer cooperative purchasing agreements on behalf of South Carolina Public Procurement Units (as defined by S.C. Code Ann. § 11-35-4610(5), as amended), both state and local. Consistent with its statutory authority, OSE is acting solely in a representative capacity and on behalf of Owners. OSE is not a party to this Agreement. Notwithstanding any other provision of this Agreement, OSE bears no liability for any party's losses arising out of or relating in any way to this Agreement.

Building Official means the officer or other designated authority charged with the administration and enforcement of the applicable building codes.

Consultant means the entity offering building inspection and/or material testing services.

**ARTICLE 1 – GENERAL**

- A. This Agreement shall be in effect for one year from the Effective Date. On each anniversary of the Effective Date, this Agreement shall automatically renew for a term of one year unless OSE sends Consultant written notice at least thirty days before the anniversary date that this Agreement shall not automatically renew. This Agreement shall terminate no later than five years after the Effective Date.
- B. As needed, a *Request for Inspection Services* shall be issued by the Owner for specific inspection and/or testing services. The Consultant agrees to accept all such requests issued by the Owner, unless the work requested is not within the expertise of the Consultant; or as agreed by Owner for just cause. The Consultant shall submit to the Owner a *Proposal for Inspection Services* that delineates all services to be provided by Consultant. Upon approval by the Owner, the *Proposal for Inspection Services* shall be incorporated into this Agreement, and all work shall be performed by the Consultant in accordance with the terms and conditions of this Agreement.
- C. Consultant acknowledges and accepts the relationship of trust and confidence between the State and the Consultant by this Agreement. Consultant further acknowledges the reliance that the building officials may place on its professional skill and judgment. Consultant covenants to furnish its best skill and judgment and to cooperate with both the Building Official and the Owner.
- D. All services provided by Consultant shall be performed in accordance with the applicable professional standards and building codes.
- E. The Documents forming this Agreement shall consist of the following: (1) Form SE-950 (this document); (2) the approved *Hourly Rate and Reimbursables Schedule*; (3) the approved *Proposal for Inspection Services* (for each Inspection Order issued under this Agreement); (4) any Form SE-955 (Inspection/Material Testing Order) issued under this Agreement; (5) any Form SE-960 (Inspection/Material Testing Order Amendment) modifying an Inspection Order issued under this agreement.
- F. In case of conflict the following documents supercede each other in accordance with the following hierarchy: (1) codes and applicable law; (2) the body of this Agreement; (3) attachments to this Agreement; (4) the Solicitation for Consultant Services under which the services covered by this Agreement were procured; and, (4) the Project Manual for the construction of the Project.
- G. This Agreement shall commence upon the written issuance of a Notice to Proceed by OSE and shall remain in effect through the duration specified herein unless otherwise modified pursuant to the terms of this Agreement.
- H. The State's obligation under this Agreement is contingent upon the availability of Owner funds from which payment for contract purposes can be made. No legal liability on the part of the State for any payment may arise until funds are made available to the Owner procurement officer and a Form SE-955 is executed by the Owner. No minimum amount of work is guaranteed.

**ARTICLE 2 – SCOPE OF WORK**

- A. The general scope of work shall include building, electrical, plumbing, and mechanical inspection services, special inspections and material tests stated in this Agreement and further specified in the *Request for Inspection Services*, which is attached hereto and by this reference incorporated herein.
- B. The scope of work for a specific project shall be established in the Form SE-955 as approved by the OSE.
- C. The performance of Consultant's Services in response to the *Request for Inspection Services* shall commence upon the execution of the SE-955 by the OSE and shall remain in effect through the duration of the project and completion of the punch list.
- D. Owner and Consultant acknowledge and agree that *Inspection/Material Testing Orders* issued by the Owner within the authorized term of the Agreement may be completed by the Consultant even though the completion date may exceed the term of the Agreement.

### **ARTICLE 3 – AUTHORIZATION OF SERVICES**

- A. The Building Official shall appoint a representative with authority to act and make binding decisions on the Building Official's behalf with respect to the performance of a specific *Inspection/Material Testing Order*. The Owner's representative shall be the responsible person to examine documents submitted by the Consultant, to render decisions thereto in a timely manner, and to be the contact person for the Building Official regarding performance and other contract issues.
- B. The Owner will initiate a *Request for Inspection Services* for specific services and work products as required for a project.
- C. The Consultant's *Hourly Rate and Reimbursables Schedule*, as submitted and agreed upon, shall be a part of this Agreement for the duration of the Agreement and is to be utilized in the preparation of each fee proposal for all *Inspection Orders* to be issued under this Agreement. The *Hourly Rate Schedule* will include hourly rates of each type or class of employee anticipated to perform work for the various *Inspection Orders* issued during the term of this Agreement. The *Hourly Rate Schedule* shall be inclusive of the entire team, including sub-consultants, to be utilized. An increase of 3% (multiplier of 1.03) may be applied to the initial Hourly Rate Schedule for each of the annual extensions awarded to the Firm.
- D. The Consultant shall submit a *Proposal for Inspection Services* to provide the necessary professional services for the specific Inspection Order. The Proposal shall be submitted to the Owner and to the Building Official.
- E. The Owner, upon receipt will review the proposal in a timely manner and, with the approval of the Building Official, accept or reject it, or request modification. Prior to issuing a Form SE-955, the Owner and Building Official reserve the right to negotiate with the Consultant to revise the scope of work and fees that are believed to be in the best interest of the State.
- F. Upon acceptance of a proposal the Owner will issue a Form SE-955 toward this Agreement.

### **ARTICLE 4 – DETERMINATION OF COSTS AND PAYMENT**

- A. The maximum amount payable for code inspections, special inspections, material testing, and for all reimbursable expenses for a specific *Inspection/Material Testing Order* shall be in the form of a "Not-to-Exceed" contract.
- B. Determination of Costs. Owner is relying on the expertise of Consultant in preparing the refined scope of work in order to assure that the inspection activities are defined and performed at a level necessary to fulfill all safety and contract documents compliance issues. Both parties shall cooperate in good faith to sequence inspections in order to reduce costs while assuring proper performance. Costs shall be determined as follows:
  - B.1. Number of inspection hours multiplied by the hourly rate in the *Hourly Rate Schedule*.
  - B.2. Number of trips multiplied by the trip expense rate for the project identified in the *Proposal for Inspection Services*. Trip expense rate shall include time and transportation to and from the job site. All billable trips must be requested in advance from the Owner Representative. Re-Inspection costs will be identified and contracted by the issuance of the form SE-960.
  - B.3. Consultant's costs may include reimbursement for lodging and meals which are related to requested inspections that are not within 100 miles of travel from inspector's home or office or require overnight stay. Said compensation for Consultant will be at the then current rates for lodging and meals as published in the current *Manual for Planning and Execution of State Permanent Improvements-Part II*. These expenses are included in the not-to-exceed amount.
  - B.4. Fees for material testing shall be calculated by multiplying the hours and the type of tests performed by the applicable rates in the *Proposal for Inspection Services*.
  - B.5. Consultant's costs may include a management fee for overseeing the work of materials testing sub-consultants. The fee for such work shall be 10% of the sub-consultant's fee for said services. The Consultant shall not be paid a management fee for material testing services provided by the Consultant.

**B.6.** By participating in this Agreement, the Owner agrees to pay the Materials Management Office (MMO) a fee for administrative services ("Fee") equal to 1% (.01) of the total dollar amount (excluding sales taxes) paid to Consultant pursuant to the Agreement. In accordance with this provision, the Consultant is responsible for collecting the Fee from a participating Owner and paying the fee to MMO. The price stated in any Consultant's *Proposal for Inspection Services* shall include all amounts necessary to meet this obligation.

**B.6.1** For each 3 month period during this Agreement, the Consultant shall pay to MMO an amount equal to 1% (.01) of the total dollar amount (excluding sales taxes) received by the Consultant pursuant to the Agreement during said Payment Period. Hereinafter, the 3 month period will be called "payment period" or "quarter" and defined as follows: Jan. - Mar., Apr. - Jun., Jul. - Sep., and Oct. - Dec.). The Consultant will also make payments for periods of less than a quarter at the beginning and ending of the Agreement. Payment for each payment period must be received on or before the last day of the month immediately following the end of the payment period (Example: Payment for the quarterly "Payment Period" of Jan. - Mar. 2004 is due on or before April 30, 2004). Payments are to be mailed to: Materials Management Office, Attn: Contract Admin. Fee, 1201 Main Street, Suite 600, Columbia, S.C., 29201. Payments shall be made to the order of the Materials Management Office.

**B.6.2** Each payment shall be accompanied by a copy of the applicable approved SE-955 and/or SE-960 form and a summary report indicating the portions of each payment applied to each SE-955 and/or SE-960.

**B.6.3** During the term of this Agreement and for a period of three years thereafter, the Materials Management Office, its auditors, or other authorized representatives shall be afforded access at reasonable times to the Consultant's accounting records in order to audit all records relating to work performed pursuant to this Agreement. If such an audit indicates that Contractor has underpaid MMO, the Consultant shall reimburse Materials Management Office for all costs of the audit.

**B.6.4** All amounts that become payable by the Consultant to MMO under this Agreement shall bear simple interest from the date due until paid unless paid within 30 calendar days of becoming due. The interest rate shall be the highest prime rate (as published in The Wall Street Journal) plus 2% per annum (unless a higher rate is provided by law, but in no event be greater than the maximum interest rate permitted by law), shall be variable, and shall be adjusted effective at the close of business on the day of any change in the prime rate.

**B.6.5** In the event the Consultant fails to make any payment when due, the Consultant shall be liable to the Materials Management Office for all expenses, court costs, and attorneys' fees (including inside counsel) incurred in enforcing the terms and conditions of this Agreement.

**B.6.6** Failure to pay any amount due pursuant to this clause may result in the Consultant's debarment pursuant to S.C. Code Ann. § 11-35-4220, as amended.

**B.6.7** For purposes of this clause, the Materials Management Office is intended as a third-party beneficiary of this Agreement.

**C.** Payments. If requested by Consultant, the Owner agrees to pay the Consultant from time to time as the work progresses, but not more than once each month after the date of the Notice to Proceed, and only upon receipt of an invoice containing sufficient detail to justify the amount of payment requested.

**C.1.** Payments on account of approved applications for payment shall be made within twenty-one (21) days of the Owner's receipt of the Consultant's invoice except that this requirement shall not apply to any amount: (a) for which the Consultant's invoice does not provide sufficient detail to demonstrate payment is due, (b) that the Owner disputes is due under the terms of the Agreement, or (c) reasonably withheld by the

Owner to cover any default or failure to perform by the Consultant. The Owner shall provide written notice to the Consultant of any adjustment to or rejection of Consultant's invoice.

#### **ARTICLE 5 – CHANGES IN THE SERVICES**

- A.** Agreement Modifications. Any changes in the Inspection Services to be performed under this Agreement shall be in the form of a written modification to this Agreement, mutually agreed to and signed by the duly authorized representative of OSE and the Consultant, specifying any such changes, fee adjustments resulting therefrom, any adjustment in time of performance, or any other significant factors arising from the changes in the services. Said modification must be signed by both OSE and Consultant IN ADVANCE of the Consultant performing the work that is the subject of the change. It shall be the responsibility of the Consultant to notify the OSE of any work it may contend is beyond the scope of this Agreement in advance of the performance of such work.
- B.** Modifications to Inspection/Material Testing Orders. Consultant shall immediately notify Owner of substantial changes in building plans, specifications, Contractor's schedule or planned scope of work that may affect the not-to-exceed amount. Change of the not-to-exceed amount caused by substantial changes must be negotiated and agreed to in writing by Owner and Consultant as a modification (SE-960) to this Agreement. No adjustment in the not-to-exceed contract amount shall be paid if Consultant fails to notify Owner of substantial changes when the change occurs.

#### **ARTICLE 6 – CONSULTANT'S DUTIES**

##### **A. General.**

- A.1.** The Consultant shall designate one or more representatives to be assigned for the duration of the Agreement. These representatives shall be authorized to act on behalf of the Consultant in all matters related to the Consultant's performance under this Agreement. The Consultant shall not replace a designated representative except for good cause shown.
- A.2.** The Consultant shall have, at the time of execution of this Agreement, all professional and business insurance, licenses, certifications and permits required to provide the required Services in the State of South Carolina and as required by this Agreement.
- A.3.** The Consultant shall have, at the time of execution of a Form SE-955, copies of all codes and standards applicable to the performance of the specific inspection and testing services to be provided.
- A.4.** The Consultant shall be entitled to rely on the accuracy of information provided by the Owner. Such reliance requires that the Consultant shall review all information provided by the Owner and shall give prompt and timely notice to the Owner of deficiencies or inconsistencies in the information furnished by the Owner.

##### **B. Discipline and Competence.**

- B.1.** Consultant shall perform its responsibilities in a professional manner and as expeditiously as possible. The Consultant shall enforce strict discipline and good order among the Consultant's employees, its sub-consultants, agents, representatives and other persons performing under this Agreement.
- B.2.** Consultant shall not permit employment of unfit persons or persons not certified and skilled in tasks assigned to them.
- B.3.** Consultant and sub-consultants shall always conduct themselves in a professional and courteous manner. Methods of intimidation, anger, or other non-professional conduct will be grounds for termination of the offending person or the termination of this Agreement, as determined by the OSE. Consultant must perform in a manner that is consistent with customary practices.

##### **C. Building Inspections.**

- C.1.** All inspections shall be in conformance with the codes and standards set forth in the *Manual for Planning and Execution of State Permanent Improvements–Part II*

- C.2.** The inspector will report directly to the Building Official and the Owner Representative. The inspector will perform inspection and other services as directed by the scope of work contained in the SE-955 and SE-960, as applicable.
- C.3.** Consultant shall notify the Building Official at least two business days prior to any change in the primary person performing on site inspections. The replacement inspector is subject to approval by the Building Official.
- C.4.** All of the Consultant's inspectors must possess current certifications from the International Codes Council in one or more of the following specialties: Building Inspector; Electrical Inspector; Mechanical Inspector; Plumbing Inspector; Fire Inspector II; Commercial Combination Inspector; Combination Inspector; applicable Special Inspector category. Inspectors will not perform inspections in trade areas for which they are not properly certified and approved by the OSE.
- C.5.** Consultant shall visit the site as contracted and make note of any work which has been covered without being inspected. Consultant shall immediately notify the Building Official of any work that has been covered without inspection.

**D. Materials Tests.**

- D.1.** Consultant is responsible to oversee the material tests for the project. Duties include but are not limited to: site supervision, inspection coordination, test and inspection management, personnel management, reporting, conflict resolution and billing.
- D.2.** Consultant shall meet with sub-consultants prior to beginning work to discuss the scope of the project. Consultant shall coordinate the work of sub-consultants to ensure that all required materials tests are completed in a timely and efficient manner.
- D.3.** Consultant shall ensure that testing personnel have access to relevant construction documents before beginning their work.
- D.4.** Consultant shall periodically visit site to oversee the work of the sub-consultants. Time spent on site managing the inspection services and overseeing sub-consultants is not billable.
- D.5.** The Consultant shall not reduce the fees paid for sub-consultants or otherwise receive a financial benefit from the fees that are charged by a sub-consultant other than the management fee allowed in Article 4.

**ARTICLE 7. BUILDING INSPECTION PROCEDURES**

**A. Building, Mechanical, Electrical, Plumbing, Fire and Special Inspections.**

- A.1.** The Contractor's Superintendent will contact the Owner Representative to arrange for building inspections. The Consultant shall respond to all inspection requests no later than two (2) business days after receiving the request. The Consultant shall not initiate an inspection without an advance request from the Owner or the Building Official. Consultant shall immediately notify the Building Official if Consultant believes that inspections are required which are not being requested by the Contractor.
- A.2.** Consultant shall immediately notify the Building Official and Owner Representative of any re-testing or re-inspection requirements. Consultant shall make note of all re-testing and re-inspections and associated expenses on the monthly invoice.
- A.3.** The Consultant's inspector, upon request, shall show proper identification to the Contractor. Any site-specific security clearance requirements must be complied with by the Consultant and sub-consultants.
- A.4.** Standards for all inspections. Inspections shall indicate whether there is compliance with:
  - A.4.1.** The design edition of the applicable building codes, unless otherwise directed by the Building Official.
  - A.4.2.** Project drawings and specifications.

**A.4.3.** Manufacturers recommendations and installation instructions.

**A.4.4.** Applicable OSE or Owner construction standards.

**B.** Materials Tests.

**B.1.** The material tests will be conducted according to the project's construction documents and specifications and according to standard material testing practices. Additional inspections/tests may be requested by the Owner or the Building Official.

**B.2.** Contractor's Superintendent will contact the Owner Representative to schedule material tests. Consultant will then schedule the appropriate personnel to complete the tests. Consultant will inform personnel of type of inspection, time requested, and location of work. The Consultant shall respond to all inspection requests no later than two (2) business days after receiving the request. If the Consultant cannot respond within this time period, he shall offer a qualified sub-consultant and notify the Building Official. The Consultant shall bear any additional cost.

**B.3.** Consultant shall provide an on-site sign-in log for inspection/testing personnel. The log shall include the time the inspector arrived and departed, the type of inspection or test, and the inspector's name. The inspection/testing personnel shall complete the log entries before leaving the site.

**B.4.** Consultant shall immediately notify the Building Official and Owner Representative of any re-testing or re-inspection requirements. Consultant shall document all failed inspections and tests on monthly invoices and the expense associated with re-testing and re-inspections.

**ARTICLE 8 – SUB-CONSULTANTS**

**A.** Required Approval.

**A.1.** Sub-consultants listed as a part of the Master Agreement in response to the Solicitation for Services shall be used for this work and not replaced during the course of this Agreement except with the advance written approval of the Building Official after complying with the following criteria.

**A.1.1.** The Consultant has established in writing that the change is in the best interest of the State of South Carolina.

**A.1.2.** The Consultant has established an appropriate reason for the change which may include, but is not limited to, the following reasons: the original sub-consultant has failed to perform, the original sub-consultant is not qualified or capable of performing, and/or the original sub-consultant has requested in writing to be released.

**A.1.3.** The circumstances related to the request do not indicate any bad faith in the original inclusion of the sub-consultant.

**A.1.4.** The Consultant shall not contract with a proposed person or entity to whom the Owner or the OSE has made a reasonable and timely objection. The Consultant shall not be required to contract with anyone to whom the Consultant has made reasonable objection.

**A.1.5.** The change in Sub-consultants shall be evidenced by a modification to this Agreement. This modification shall not impact the fees contained in the *Hourly Rate and Reimbursables Schedule*.

**B.** Sub-consultant Relations.

**B.1.** By appropriate enforceable agreement, the Consultant shall require each sub-consultant to be bound to the Consultant by the terms of this Agreement, and to assume toward the Consultant all the obligations and responsibilities which the Consultant, by this Agreement, assumes towards the Owner and the OSE.

**B.2.** Each sub-consultant agreement shall preserve and protect the rights of the Owner and the OSE and Consultant under this Agreement with respect to the work to be performed by the sub-consultant so that subcontracting thereof will not prejudice such rights, and shall allow to the sub-consultant, unless

specifically provided otherwise in the sub-consultant agreement, the benefit of all rights and remedies against the Consultant that the Consultant, by this Agreement, has against the Owner.

- B.3.** Payment to Sub-Consultants. The Consultant shall pay each sub-consultant within 7 days of receipt of payment from the Owner. The Consultant shall, by appropriate agreement with each sub-consultant, require each sub-consultant to make payment to its sub-consultant in a similar manner.

#### **ARTICLE 9 – COMMUNICATION AND DOCUMENTATION**

- A.** Communications. Consultant shall promptly communicate to the Building Official and Owner's Representative. Consultant shall communicate directly with the Owner about any Stop Work Order involving an urgent health or safety matter at the site. Any communication with the Contractor must be part of the inspector's report prepared at the site. Consultant shall not be entitled to rely upon any representation, statement or conduct of any person or entity, except as provided in this Agreement.
- B.** Documentation In General. Consultant shall prepare written reports to document the results of all inspections and tests and any discussions thereof with the Contractor. Consultant shall also take photographs and other means of documentation as may be appropriate. Consultant shall be prepared to take photographs of any inspection where such photograph assists in the understanding of the condition of the site or facility being inspected.
- C.** Inspection Reports. Consultant shall make a written report of each inspection indicating whether there is compliance with the project drawings and specifications, and applicable codes. This report must be completed before leaving the project site. A copy of the inspection report listing necessary corrections shall be left with the Contractor's superintendent. Consultant shall make note of all re-inspections and associated expenses on the monthly invoice. Consultant shall provide a copy of all reports to the Building Official, Owner's Representative, and the Architect/Engineer within two (2) business days of the inspection. This delivery may be accomplished by courier, fax, electronic mail, or other means approved by the Building Official.
- D.** Material Testing Reports. Consultant shall provide a report of the results of materials tests to the Building Official, Owner's Representative, and the Architect/Engineer within two (2) business days. Consultant shall notify Building Official of tests or inspections that have failed and are not immediately correctable.
- E.** Monthly Reports. Consultant shall provide a printed monthly report to the Building Official, Owner's Representative, and the Architect/Engineer. The monthly report shall include a summary of testing and/or inspection issues that are not resolved as of the end of the month. It shall also include photographs as appropriate to document and explain the information contained in the report.
- F.** Immediate Notification of Unusual Problems. In addition, Consultant shall promptly notify the Building Official by telephone of any unusual problems discovered during the inspection. If the Building Official does not answer the telephone call, then a voice message shall be left for the Building Official.
- G.** Modification to Report Requirements. Notwithstanding the provisions of Article 5 the requirements of this Article may be modified through alternative provisions contained in the attachments to this Agreement.

#### **ARTICLE 10 – APPEAL OF CONSULTANT'S DECISIONS**

- A.** Consultant shall cooperate with and participate in any appeal made pursuant to the Owner's appeal process of consultant's decisions. Consultant shall provide reports, documentation, and testimony as required. Consultant shall be compensated for its reasonable costs to respond to an appeal only if the Consultant's decision is upheld in the appeal.

#### **ARTICLE 11 – HAZARDOUS OR EMERGENCY SITUATIONS; STOP WORK ORDERS**

- A.** If the Consultant encounters a hazardous or emergency situation, the Consultant is authorized to issue a Stop Work Order or initiate any other customary means of resolving the hazardous or emergency situation. The Consultant shall immediately inform the Building Official and the Owner Representative of any action taken and provide a detailed analysis in the report prepared at the site. On the same day that the Stop Work Order is



issued, Consultant shall provide a copy of this report to the Building Official and the Owner Representative. This delivery may be accomplished through electronic means.

## **ARTICLE 12 – INSURANCE**

A. To protect against liability, loss and/or expense in connection with the performance of services described under this agreement, the Consultant shall obtain and maintain in force during the entire period of this agreement without interruption, at its own expense, insurance as listed below from insurance companies authorized to do business in the State of South Carolina. Consultant shall require that the insurance requirements contained in this Article be met by each testing and inspection firm with which it subcontracts to accomplish its responsibilities under this Agreement. Minimum insurance coverage limits required shall be as required by law, or as shown in Article 6.25 of the *Manual for Planning and Execution of State Permanent Improvements Part II*, whichever is greater. The coverage limits specified therein may be supplemented by additional requirements contained in the Solicitation for Consultant Services or any other document used to procure Consultant's services.

A.1. Professional Liability Insurance. The Consultant shall maintain, at its expense, Professional Liability Insurance, on a "claims made" basis, with an aggregate policy limit of not less than \$500,000. Unless project specific insurance is required by the OSE through a provision in the Solicitation for Consultant Services or an attachment to this Agreement, this coverage may be written under a practice policy with limits applicable to all projects undertaken by the Consultant but the coverage must be maintained in force for the discovery of claims for a period of three (3) years after the date final payment is made to the consultant under this Agreement. The policy must contain a "retroactive" or "prior-acts" date which precedes the earlier of, the date of this Agreement or the commencement of the Consultant's services. The policy must also include contractual liability coverage applicable to the indemnity provision of this Agreement for those portions of the indemnity provisions that are insured under the Consultant's policy.

A.2. Worker's Compensation Insurance and Employers' Liability Insurance. Worker's Compensation Insurance shall cover full liability under the Worker's Compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction. Employer's Liability Insurance shall provide the following limits of liability: \$100,000 for each accident; \$500,000 for Disease-Policy Limit; and \$100,000 for Disease-Each Employee.

A.3. Commercial General Liability Insurance. Commercial General Liability Insurance shall be on an "occurrence basis" and shall include insurance for premises and operations, independent contractors, projects/completed operations, and contractual liability coverage with limits as follows: \$1,000,000 General Aggregate; \$1,000,000 Personal & Advertising Injury; \$1,000,000 for each occurrence; \$5,000 medical expenses for any one person. The State of South Carolina shall be named as an insured party, as primary coverage and not contributing, and the policy shall be endorsed to include a waiver of subrogation in favor of the State of South Carolina.

A.4. Other Insurance Coverages. Consultant shall maintain insurance as follows: Business Automobile Liability Insurance; \$1,500,000 Combined Single Limit or \$750,000 Bodily Injury & Property Damage (each). Any type of insurance or any increase of limits of liability not described in this agreement which the Consultant requires for its own protection or on account of any statute, rule, or regulation shall be its own responsibility and at its own expense.

## **ARTICLE 13 – TERMINATION**

A. Termination by Consultant. This Agreement may be terminated by Consultant upon seven (7) days written notice should the OSE fail substantially to perform, through no fault of the Consultant and the OSE has failed to cure the failure to perform within fourteen (14) days of the OSE's receipt of written notice of its failure to perform. Upon termination of this Agreement, the Consultant shall deliver all work performed to the OSE. In the event of termination, the Consultant shall be compensated for services properly performed under this Agreement up to date of the notice of termination.

- B.** Termination by OSE. The performance of service under this Agreement may be terminated by the OSE in whole or in part at any time, whenever the OSE shall determine that such termination is in the best interest of the State of South Carolina. Any such termination shall be effected by delivery to Consultant of a written notice of termination specifying the extent to which performance of work under the Agreement is terminated and the date upon which such termination becomes effective. The Consultant acknowledges that in the event of such termination, its total remedy and monetary recovery is limited to full payment by the respective agencies for all work acceptably performed, plus reimbursables, under this Agreement up to the date of termination. Consultant further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, comments and any and all documents produced by Consultant under this Agreement up to the date of termination are the property of the OSE.

#### **ARTICLE 14 – CLAIMS AND DISPUTES**

Any and all claims by or disputes between the parties arising out of or related to this Agreement shall be addressed as follows.

- A.** The party seeking such relief shall file a written notice with the other party within twenty-one (21) days of the date that the claimant is aware of, or should have been aware of, such claim. The notice shall set forth in reasonable detail the nature of and basis for the claim and the amount of damages or other relief sought. Notice of any counterclaims shall be provided in a similar manner within twenty-one (21) days of the receipt of the notice of claim.
- B.** The OSE shall review the claim and any counterclaims and render a decision within sixty (60) days of the receipt of the initial claim unless the parties agree to an extension of this time.
- C.** Consultant consents to be governed by §11-35-4230 of the SC Code of Laws, as amended, and agrees that §11-35-4230 applies to and governs the Agreement. Consultant waives any objection it may have now or hereafter to the administrative process required by §11-35-4230. To the extent that §11-35-4230, by its own terms, does not govern a claim or controversy arising out of or relating to the Agreement, Consultant agrees that any suit, action or proceeding arising out of or relating to the Agreement shall be instituted and maintained only in a state or federal court located in Richland County, State of South Carolina. Notwithstanding any other agreement between Consultant and the State, the Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, and any suit, action or proceeding arising out of or relating to the Agreement shall be governed by the laws of the State of South Carolina. Consultant agrees that any act by the State regarding the Agreement is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the phrase, "the State" includes any governmental entity transacting business with the Consultant pursuant to the Agreement and the South Carolina Budget & Control Board.

#### **ARTICLE 15 – MISCELLANEOUS PROVISIONS**

- A.** Safety. The Consultant shall ensure that all employees and Sub-Consultants are aware of and comply with safety requirements before arriving on site. Safety requirements include, but are not limited to, wearing approved hard hat, safety glasses, and footwear.
- B.** Ownership of Work Product. All work product, which includes, but is not limited to all manuals, forms, contracts, schedules, reports, documentation, photographs, data, electronic data, comments and any and all documents supplied to or produced by Consultant under this Agreement are the property of the OSE. Said work product and the information contained therein are the exclusive property of the OSE and are not to be used by Consultant on any other projects with any other parties except by the advance written agreement of the OSE. Consultant agrees to maintain the level of confidentiality, to the extent permitted by law, needed to protect the State's interest in the design, construction, and management of the project.
- C.** Legal Relationship. This Agreement is for the performance of services and not the sale of goods, and is to be construed according to the laws of the State of South Carolina. Consultant's relationship to the State is that of an independent contractor. No partner or employee of Consultant shall, by reason of this Agreement, become

an employee of the State of South Carolina. The Consultant shall have no authorization, expressed or implied, to bind the OSE or the State of South Carolina to any agreement, settlement, liability, or understanding whatsoever, nor to perform any acts as agent for the OSE or the State of South Carolina except as specifically set forth in this Agreement. The OSE shall identify the desired performance outcome and the Consultant shall determine the manner and method of achieving that outcome consistent with professional and customary practices. Nothing in this section is intended to limit or reduce any governmental immunities to the extent any may be available to Consultant by reason of its performance of inspections on behalf of the State of South Carolina.

- D.** Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.
- E.** Hold Harmless Requirement. To the fullest extent permitted by law, the Consultant hereby agrees to indemnify and save harmless the State of South Carolina, the Office of State Engineer, their officers, agents and employees from and against any and all claims arising from intentional or negligent acts, errors or omissions of the Consultant and its sub-consultants in the performance of any work under this Agreement.
- F.** Nothing in this Agreement shall be construed to give any rights, contractual relationship or benefit to a third party against either the OSE or the Consultant.
- G.** Nothing in this Agreement shall prevent the Consultant from employing any independent consultant, associate, or sub-contractor to assist in the execution of the work.
- H.** Records of the Consultant's personnel, consultants, and reimbursable expenses pertaining to the project shall be kept on a generally recognized account basis and shall be available to the OSE or their authorized representative at mutually agreeable times.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, by their duly authorized agents.

CONSULTANT. I represent to Owner that I have full legal authority to enter into this Agreement and that the execution of this Agreement is authorized by Consultant.

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By:

Its:

OFFICE OF STATE ENGINEER, an instrumentality of the State of South Carolina, acting on behalf of Owner. I personally represent that I have been duly appointed by the Office of State Engineer and am authorized to execute this Agreement.

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By:

Its: Procurement Officer

**End of Document**